

### **AMENDMENTS TO THE DRAWINGS:**

The attached sheet of drawings includes a change to Figure 8. This replaces the original sheet including Figure 8. In Figure 8, an output arrow has been added to step 812.

Attachment: Replacement Sheet.

## **REMARKS**

Claims 1-46 are pending in the present application. Claims 1-11, 13-16, 18-21, 23-33, and 35-45 were amended. Reconsideration of the claims is respectfully requested.

In addition, an amendment was made to Figure 8 to correct a minor omission.

### **I. Telephone Interview with Examiner Mattis on April 22, 2005**

Applicants thank Examiner Mattis for the courtesy extended to applicants' representative during the April 22, 2005 telephone interview. During the telephone interview, the examiner and applicants' representative discussed a cited prior art reference contained in the Office Action and discussed amending the independent claims. The features discussed in the proposed independent claim amendments have been added to amended dependent claims 3, 9, 25, 31, 37, and 43.

The other features recited in amended independent claims 1, 7, 13, 18, 23, 29, 35, and 41 also are not taught or suggested by the prior art references. The substance of the arguments for the other recited features not taught or suggested by the prior art references are found in the remarks of Sections III-VI, which follows below.

### **II. Objection to Claims, Claims 11, 33, and 45**

The examiner objected to claims 11, 33, and 45 because claims 11, 33, and 45 contained informalities. With regard to claims 11, 33, and 45, the examiner stated:

Each of these claims contains the limitation, "changing a type of server for data packets for the selected path." It appears that the word "server" is a typo and should have been "service." There is no mention in the description describing changing a type of server; however, there are multiple mentions of changing a type of service of a packet (for example see lines 3-12 and Figure 6 of the description). It is recommended that "server" be changed to "service" in these claims. For the purposes of examination these claims will be treated as if they read "changing a type of service for data packets for the selected path."

Appropriate correction is required.

*Office Action*, dated February 16, 2005, Page 2.

In response to the examiner's objection to claims 11, 33, and 45, claims 11, 33, and 45 are amended according to the examiner's recommendation. Amended dependent

claim 11, which is representative of amended dependent claims 33 and 45, reads as follows:

11. The method of claim 7, wherein the action comprises:  
changing a quality of service for data packets for the selected  
network path.

Therefore, having made the appropriate corrections to claims 11, 33, and 45, the objection to claims 11, 33, and 45 have been overcome.

**III. 35 U.S.C. § 102, Anticipation, Claims 1-5, 7-9, 11, 12, 23-27, 29-31, 33-39, 41-43, 45, and 46**

The examiner has rejected claims 1-5, 7-9, 11, 12, 23-27, 29-31, 33-39, 41-43, 45, and 46 under 35 U.S.C. § 102 (b) as being anticipated by *Jain et al.*, U.S. Patent No. 5,491,801 ("*Jain*"). This rejection is respectfully traversed.

In rejecting the claims, the examiner stated:

**With respect to claims 1, 23, and 35, *Jain et al.* discloses a method, data processing system, and computer program product for managing traffic in a network data processing system (See the abstract of *Jain et al.* for reference to a method and apparatus for operating a digital communication network to avoid congestion). *Jain et al.* also discloses monitoring traffic for a plurality of network paths (See column 9 lines 44-55 of *Jain et al.* for reference to monitoring the throughput associated with each source/destination pair sending packets). *Jain et al.* further discloses responsive to a packet for a particular network path within the plurality of network paths causing traffic for the particular network path to exceed a level of traffic allowed, reducing an amount of bandwidth available based on a fair share of the particular network path (See column 10 line 22 to column 11 line 39 of *Jain et al.* for reference to identifying S-D route pairs with throughputs which are larger than the fair share and decreasing the bandwidth available to the violating S-D route pairs by decreasing a window size).**

*Office Action, Page 3.*

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566,

1567 (Fed. Cir. 1990). All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). Anticipation focuses on whether a claim reads on the product or process a prior art reference discloses, not on what the reference broadly teaches. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 218 U.S.P.Q. 781 (Fed. Cir. 1983). In this case, each and every feature of the presently claim invention is not shown in the cited reference as arranged in the claims.

Amended independent claim 1 reads as follows:

1. A method in a data processing system for managing traffic in a network data processing system, the method comprising:  
monitoring the traffic for a plurality of network paths; and  
responsive to a packet for a particular network path within the plurality of network paths causing the traffic for the particular network path to exceed a level of traffic allowed, **reducing an amount of bandwidth available to the particular network path using an action based on a protocol used by the particular network path** (emphasis added).

Amended independent claims 7, 23, 29, 35, and 41 include features similar to those in claim 1. In this case, each and every feature of claim 1 is not taught by *Jain*. For example, *Jain* does not teach “reducing an amount of bandwidth available to the particular network path using an action based on a protocol used by the particular network path” as recited in amended claim 1. As amended, the amount of bandwidth available to a particular network path is reduced using an action based on the protocol used by the particular network path. In contrast, *Jain* teaches using a fixed value for reducing bandwidth, rather than reducing the bandwidth using an action based on the protocol used as recited in claim 1.

More specifically, with regard to reducing the throughput at the end systems, *Jain* teaches that each source which is required to reduce its window size reduces the window size by 0.125 times its current window size. *Jain*, Col. 11, lines 43-46. The new reduced window has a size that is 0.875 times the original window size. In *Jain*, the window size is reduced every time by the same fixed amount of 0.125 times for a network path accounting for more than its fair share of throughput in an overload condition.

In contrast, the presently claimed invention in claim 1 recites “reducing an amount of bandwidth available to a particular network path using an action based on the protocol used by the particular network path.” In claim 1, the protocol utilized by the particular network path is used to determine the action to reduce the bandwidth for the particular network path.

Consequently, *Jain* does not teach reducing the amount of bandwidth available to a particular network path using an action based on the protocol used by the particular network path as is recited in amended claim 1. Instead, this cited reference teaches using a fixed reduction of 0.125 in the window size when a network path exceeds its fair share. As a result, *Jain* does not identically teach each and every element recited in amended claim 1 of the present invention. Accordingly, the rejection of independent claims 1, 7, 23, 29, 35, and 41 as being anticipated by *Jain* has been overcome.

In view of the above arguments, amended independent claims 1, 7, 23, 29, 35, and 41 are in condition for allowance. As a result, claims 2-6, 8-12, 24-28, 30-34, 36-40, and 42-46 are dependent claims depending on independent claims 1, 7, 23, 29, 35, and 41, respectively. Consequently, claims 2-6, 8-12, 24-28, 30-34, 36-40, and 42-46 also are allowable, at least by virtue of their dependence on allowable claims.

Accordingly, the rejection of claims 1-5, 7-9, 11-12, 23-27, 29-31, 33-39, 41-43, and 45-46 as being anticipated by *Jain* has been overcome.

#### **IV. 35 U.S.C. § 103, Obviousness, Claims 6, 28, and 40**

The examiner has rejected claims 6, 28, and 40 under 35 U.S.C. § 103 as being unpatentable over *Jain* in view of *Afek et al.*, U.S. Patent No. 5,748,901 (“*Afek*”). This rejection is respectfully traversed.

The examiner bears the burden of establishing a *prima facie* case of obviousness based on the prior art when rejecting claims under 35 U.S.C. § 103. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). For an invention to be *prima facie* obvious, the prior art must teach or suggest all claim limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). The examiner has not met this burden because all of the features of these claims are not found in the cited references as believed by the

examiner. Therefore, a combination of *Jain* and *Afek* would not reach the presently claimed invention in these claims.

As shown above, *Jain* does not teach or suggest all of the claim limitations as recited in amended independent claim 1. In particular, *Jain* does not teach or suggest that the amount of bandwidth available to a particular network path is reduced by using an action based on the protocol used by the particular network path as recited in claim 1 of the current invention. This feature also is not taught or suggested by *Afek*.

Therefore, since neither *Jain* nor *Afek* teach or suggest that reducing the amount of bandwidth is accomplished by using an action based on the protocol used by the particular network path as recited in amended independent claim 1 of the present invention, then the combination of *Jain* and *Afek* cannot teach or suggest this recited feature. As a result, claim 6 of the current invention also is allowable at least by virtue of its dependence upon an allowable claim. Claims 28 and 40 include features similar to those in claim 6. Accordingly, the rejection of claims 6, 28, and 40 as being unpatentable over *Jain* in view of *Afek* has been over come.

**V. 35 U.S.C. § 103, Obviousness, Claims 10, 32, and 44**

The examiner has rejected claims 10, 32, and 44 under 35 U.S.C. § 103 as being unpatentable over *Jain* in view of *Blasbalg*, U.S. Patent No. 4,771,391 (“*Blasbalg*”). This rejection is respectfully traversed.

As stated above, *Jain* does not teach or suggest all the claim limitations of the present invention as recited in amended independent claim 1. More specifically, *Jain* does not teach or suggest that the amount of bandwidth available to a particular network path is reduced by using an action based on the protocol used by the particular network path as recited in claim 1 of the present invention. This feature also is not taught or suggested in *Blasbalg*.

Therefore, since neither *Jain* nor *Blasbalg* teach or suggest that reducing the amount of bandwidth is accomplished by using an action based on the protocol used by the particular network path as recited in amended independent claim 1 of the present invention, then the combination of the two prior art references cannot teach or suggest this recited claim limitation. Consequently, claim 10 of the current invention also is

allowable at least by virtue of its dependence upon an allowable claim. Claims 32 and 44 include features similar to those in claim 10. Accordingly, the rejection of claims 10, 32, and 44 as being unpatentable over *Jain* in view of *Blasbalg* has been overcome.

**VI. 35 U.S.C. § 103, Obviousness, Claims 13-22**

The examiner has rejected claims 13-22 under 35 U.S.C. § 103 as being unpatentable over *Packer et al.*, U.S. Patent No. 6,205,120 ("*Packer*") in view of *Jain*. This rejection is respectfully traversed.

The examiner stated that *Packer* does not teach monitoring traffic for a plurality of network paths and reducing an amount of bandwidth available for the particular network path in response to a packet for a particular network path causing traffic to exceed a level of traffic allowed as recited in claims 13 and 18 of the present invention. *Office Action*, Pages 7 and 8. Furthermore, since *Packer* does not teach or suggest reducing an amount of bandwidth available for the particular network path, *Parker* cannot teach or suggest that reducing the amount of bandwidth is accomplished by using an action based on the protocol used by the particular network path as further recited in amended claims 13 and 18. Thus, *Parker* does not teach or suggest the above mentioned claim features recited in claims 13 and 18 of the present invention.

Moreover, as shown above, *Jain* does not teach or suggest that the amount of bandwidth available to a particular network path is reduced by using an action based on the protocol used by the particular network path as recited in claim 1 of the present invention. As a result, *Jain* does not teach or suggest this claim limitation recited in amended independent claims 13 and 18 either.

Therefore, since neither *Jain* nor *Parker* teach or suggest that the amount of bandwidth available to a particular network path is reduced by using an action based on the protocol used by the particular network path, then the combination of *Jain* and *Parker* cannot teach or suggest this limitation as recited in amended independent claims 13 and 18. Accordingly, the rejection of claims 13 and 18 as being unpatentable over *Packer* in view of *Jain* has been overcome. In view of the above arguments, amended independent claims 13 and 18 are in condition for allowance. As a result, claims 14-17 and 19-22 are dependent claims depending on

independent claims 13 and 18, respectively. Consequently, claims 14-17 and 19-22 also are allowable, at least by virtue of their dependence on allowable claims.

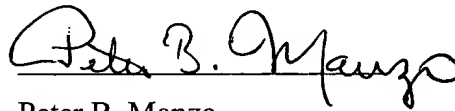
**VII. Conclusion**

It is respectfully urged that the subject application is patentable over the cited references and is now in condition for allowance.

The examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

DATE: May 16, 2005

Respectfully submitted,

A handwritten signature in cursive script, reading "Peter B. Manzo", written over a horizontal line.

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